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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,006	09/11/2003	Richard Neil Tobin	884.0080USU	7484

7590 06/22/2006

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EXAMINER

FETSUGA, ROBERT M

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 06/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/661,006

Applicant(s)

TOBIN ET AL.

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,6,8,10-15,17,18,20,21,24-32,36-41 and 43-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,6,8,10-15,17,18,20,21,24-32,36-41 and 43-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01/18/05 & 09/26/05 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 09, 2006 has been entered.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "aeration and/or drainage apertures" set forth in claim 18, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Applicant argues at page 10 of the response filed May 09, 2006 page 14 of the specification and Figs. 1, 7 and 9 teach supplying air from conduit 45, through pump 46 and exhaust 47, to apertures 15, and into reservoir 9. The examiner can not agree. Air exhaust 47 is actually disclosed as being connected to aeration outlets 16 (pg. 14 lns. 21-22), rather than apertures 15 as argued. This is understandable as aeration outlets 16 are in communication with the fluid in reservoir 9 (pg. 8 lns. 22-27), like in a common foot bath such as that disclosed by Ferber '795. However, apertures 15 can not supply

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air to the fluid in reservoir 9 (contrary to applicant's argument) as they are disposed on the raised portion/surface 10 above the reservoir 9.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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3. Claim 18 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The claim recites "wherein said raised portion accommodates... aeration and/or drainage apertures".

Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner.

Applicant argues at pages 11-12 of the response the apertures 15 supply air to the reservoir 9. The examiner can not agree for the reasons advanced supra in paragraph 2.

4. Claims 44-46 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 44 and 46 recite particular types of heaters which are only disclosed schematically. Therefore, implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner. While schematic illustrations of a device are sufficient when details of construction and operation are known in the art, applicant's argument at pages 19-20 of the

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response implies the claimed heaters can distinguish an otherwise unpatentable claim.

5. Claims 6 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are redundant to claims 1 and 17, respectively.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the

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art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 1, 2, 4, 6, 8, 11, 12, 14, 15, 17, 20, 21, 24, 26, 27, 29-32 and 44-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurosawa '529 and Wu.

The Kurosawa '529 ('529) reference discloses a spa comprising: a housing 2; a fluid transport assembly 22 including an inlet 20, an outlet 18 and a pump 22; a heater 21a; a vibrating actuator 16; a control panel/controller 29; a raised surface 5; an infrared heater 6; a cover 3; a raised portion (Fig. 2); and an aerator 19. Re claims 44-46, to the extent the claimed heaters are known in the art (as evidenced from applicant's disclosure), the choice of a particular heater type from the many known heaters would appear an obvious choice to be made. Therefore, '529 teaches all claimed elements except for the control panel/controller being a wireless remote.

Although the control panel/controller of the '529 foot treatment device may not be a wireless remote, as claimed, attention is directed to the Wu reference which discloses an analogous foot treatment device which further includes a wireless remote control (22). Therefore, in consideration of Wu, it would have been obvious to one of ordinary skill in the foot treatment device art to associate a wireless remote control

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with the '529 spa in order to facilitate use. Re claim 12, Wu further teaches providing a control panel 74,77 in combination with the wireless remote 22.

Applicant's arguments at pages 14-15 of the response with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

8. Claims 3, 14, 17, 18, 24, 28-30, 32, 36-39, 41, 43 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over '529 and Wu as applied to claim 1 above, and further in view of Ferber et al. '795.

Re claim 3, although the '529 spa does not include a housing heater, as claimed, attention is directed to the Ferber et al. '795 ('795) reference which discloses an analogous spa which further includes a housing heater 48. Therefore, in consideration of '795, it would have been obvious to one of ordinary skill in the spa art to associate a housing heater with the '529 spa in order to facilitate use.

Re claim 14, it would have been obvious to locate the infrared heater of the '529 spa on the raised portion as taught by '795 (abstract) in order facilitate use.

Re claim 29, although the '529 spa does not include a variety of attachments, attention is again directed to '795 (Figs. 9-21) which discloses a variety of attachments (Figs. 14-

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18b). Therefore, in further consideration of '795, it would have been obvious to one of ordinary skill in the spa art to associate a variety of attachments with the '529 spa in order to facilitate use.

Re claim 36, it would have been obvious to utilize a roller actuator with the '529 spa as taught by '795 (element 42) in order to facilitate use.

Re claim 43, although the '529 spa does not include a foot bed insert, as claimed, attention is yet again directed to '795 (Fig. 20) which discloses a foot bed insert 193. Therefore, in still further consideration of '795, it would have been obvious to one of ordinary skill in the spa art to associate a foot bed insert with the '529 spa in order to facilitate use.

Applicant has not substantively argued this ground of rejection beyond noting claim dependency.

9. Claims 10, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over '529 and Barradas as applied to claim 1 above, and further in view of Morton.

Re claim 10, although the outlet of the '529 spa does not include an adjustable nozzle, as claimed, attention is directed to the Morton reference which discloses an analogous spa which further includes an adjustable nozzle (par. 0034 lns. 1-3). Therefore, in consideration of Morton, it would have been

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obvious to one of ordinary skill in the spa art to associate an adjustable nozzle with the '529 spa in order to facilitate use.

Re claim 13, although the control panel of the '529 may not be "suitable to be operated via a user's foot or toe", as claimed, attention is directed to the Morton reference which discloses an analogous spa which further includes a control panel 60 that is operated via a user's foot (par. 0045).

Therefore, in consideration of Morton, it would have been obvious to one of ordinary skill in the spa art to associate a foot operated control panel with the '529 spa in order to facilitate use. Applicant has not substantively argued this ground of rejection beyond noting claim dependency.

10. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over '529, Wu and '795 as applied to claim 17 above, and further in view of Cafaro.

Although the raised portion of the '529 spa does not include a heat control, an attachment receptor and an infrared heater, as disclosed, attention is directed to the '795 reference (Figs. 9-21) which discloses an analogous spa which further includes a raised portion 120 having a heat control 142, an attachment receptor 187 and an infrared heater 146. Therefore, in consideration of '795, it would have been obvious to one of ordinary skill in the spa art to associate a heat

control, an attachment receptor and an infrared heater with the '529 raised portion in order to facilitate use.

Although the raised portion of the '529 spa does not include an aperture, as claimed, attention is directed to the Cafaro reference which discloses an analogous spa which further includes a raised portion 142 having an aperture 168. Therefore, in consideration of Cafaro, it would have been obvious to one of ordinary skill in the spa art to associate an aperture with the '529 raised portion in order to facilitate use.

Applicant has not substantively argued this ground of rejection beyond noting claim dependency.

11. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over '529 and Wu as applied to claim 17 above, and further in view of Yeh.

Although the '529 spa does not include an ozone emitter, as claimed, attention is directed to the Yeh reference which discloses an analogous spa which further includes an ozone emitter (abstract). Therefore, in consideration of Yeh, it would have been obvious to one of ordinary skill in the spa art to associate an ozone emitter with the '529 spa in order to facilitate use.

Applicant has not substantively argued this ground of rejection beyond noting claim dependency.

12. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over '529, Wu and '795 as applied to claim 36 above, and further in view of Bauer et al.

Although the knob of the '529 controller does not include soft elastic material, as claimed, attention is directed to the Bauer et al. (Bauer) reference which discloses an analogous controller which further includes a knob having soft elastic material (abstract). Therefore, in consideration of Bauer, it would have been obvious to one of ordinary skill in the controller art to associate soft elastic material with the '529 knob in order to facilitate use.

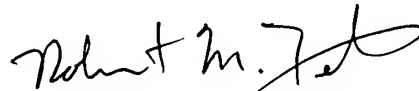
Applicant has not substantively argued this ground of rejection beyond noting claim dependency.

13. Applicant's remarks have been fully considered and have been previously addressed.

14. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

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15. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.

A handwritten signature in black ink, appearing to read "Robert M. Fetsuga", with a stylized flourish at the end.

Robert M. Fetsuga
Primary Examiner
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